

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE SOUTHERN DISTRICT OF TEXAS**  
**HOUSTON DIVISION**

DARRELL R. WALTER,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	CIVIL ACTION H-04-3848
	§	
JOHN W. CHRISTIAN, <i>et al.</i> ,	§	
	§	
Defendants.	§	

**MEMORANDUM ON DISMISSAL**


The Plaintiff has not responded to the Defendants’ Motion for Summary Judgment, [Docket Entry No. 26]. Plaintiff was advised in this Court’s order that “[f]ailure of the Plaintiff to respond to the Defendant’s motion within the time limit may result in dismissal of this action for want of prosecution under Rule 41(b), Fed. R. Civ. P.”

The Plaintiff’s failure to pursue this action forces this Court to conclude that he lacks due diligence. Therefore, under the inherent powers necessarily vested in a court to manage its own affairs, this Court determines that dismissal for want of prosecution is appropriate. *See* Fed.R.Civ.P. 41(b); *Link v. Wabash R.R.*, 370 U.S. 626 (1962);

*Martinez v. Johnson*, 104 F.3d 769 (5th Cir. 1997) (the Fifth Circuit affirmed a dismissal for want of prosecution based on a habeas petitioner's failure to respond to a summary judgment motion as ordered by the district court). Dismissal is also appropriate for failure to comply with a court order. The Plaintiff is advised, however, that upon a proper showing, relief from this order may be granted in accordance with Fed.R.Civ.P. 60(b). *See Link*, 370 U.S. at 635.

Accordingly, it is ORDERED that this action be DISMISSED without prejudice for want of prosecution and for failure to comply with an order of this Court. All pending motions and other requests for relief are DENIED.

SIGNED at Houston, Texas, on this 30<sup>th</sup> day of August, 2005.



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DAVID HITTNER

United States District Judge